

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ORION CUFFE

Plaintiff,

v.

WACHOVIA MORTGAGE
CORPORATION; et al.,

Defendants.

3:11-cv-0525-LRH-WGC

ORDER

Before the court are defendant Wachovia Mortgage's ("Wachovia") motion to dismiss (Doc. #17¹) and motion to expunge lis pendens (Doc. #18). Plaintiff Orion Cuffe ("Cuffe") filed an opposition to the motions (Doc. #27) to which Wachovia replied (Doc. #32).

I. Facts and Background

On September 12, 2007, Cuffe purchased real property through a mortgage note and deed of trust executed by non-party World Savings Bank ("WSB"). Cuffe defaulted on the loan and defendants initiated non-judicial foreclosure proceedings. During the foreclosure process Cuffe allegedly entered into a loan modification program with defendant Wachovia Mortgage Corporation ("Wachovia"). However, during that process defendants allegedly continued with the foreclosure proceedings.

¹ Refers to the court's docket number.

1 Subsequently, Cuffe filed a complaint against defendants alleging a single cause of action
2 for violation of Nevada's Unfair and Deceptive Trade Practices Act, NRS 598 et seq. Doc. #1,
3 Exhibit B. Thereafter, Wachovia filed the present motions to dismiss and to expunge lis pendens.
4 Doc. ##17, 18.

5 **II. Discussion**

6 In its motion to dismiss, Wachovia seeks to dismiss Cuffe's complaint for failure to state a
7 claim upon which relief can be granted. *See* Doc. #17. In particular, Wachovia argues that initiating
8 a non-judicial foreclosure is not an unfair or deceptive trade practice in violation of NRS 598.

9 In opposition, Cuffe fails to oppose Wachovia's motion to dismiss and instead raises new
10 causes of action and allegations against Wachovia that were not in his original complaint. Because
11 it appears to the court that Cuffe is attempting to amend his complaint, the court shall grant Cuffe
12 leave to file an amended complaint and deny Wachovia's motions without prejudice.

13
14 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #17) and motion
15 to expunge lis pendens (Doc. #18) are DENIED without prejudice.

16 IT IS FURTHER ORDERED that plaintiff shall have up to fifteen (15) days from entry of
17 this order to file an amended complaint.

18 IT IS SO ORDERED.

19 DATED this 3rd day of January, 2012.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE